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3 BILL NO. G-92-08-41 (AS AMENDED) (AS AMENDED)

4 GENERAL ORDINANCE NO. G-48-92

5 AN ORDINANCE of the Common Council of the  
6 City of Fort Wayne, Indiana amending  
7 Chapter 18 of the Municipal Code of the  
8 City of Fort Wayne by adding a new  
9 Article III entitled "Real Estate which  
is Used For The Illegal Use or Sale of  
Narcotics or Controlled Substances,  
Gambling or Prostitution."

10 WHEREAS, the Common Council of the City of Fort Wayne,  
11 and the Mayor of the City of Fort Wayne have determined this  
12 amendment to Chapter 18 of the Municipal Code of the City of  
13 Fort Wayne, adding a new Article III "Real Estate which is  
14 Used For The Illegal Sales of Narcotics or Controlled  
Substances, Gambling or Prostitution" is necessary in order to  
give the Police Department and other departments and agencies  
of the City of Fort Wayne additional means to utilize in  
building a stronger and safer city; and

15 WHEREAS, the addition of this Article III to Chapter 18  
16 of the Municipal Code of the City of Fort Wayne promotes the  
17 public safety and welfare of the citizens of the City of Fort  
Wayne, and will be in the best interests of the City.

18 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
19 THE CITY OF FORT WAYNE, INDIANA AS FOLLOWS:

20 SECTION 1. Chapter 18 of the Municipal Code of the City  
21 of Fort Wayne, Indiana is hereby amended by adding thereto a  
22 new Article III "Real Estate Which Is Used For The Illegal Use  
Or Sales Of Narcotics Or Controlled Dangerous Substances,  
Gambling Or Prostitution," which shall read as follows:

23 Sec. 18-53. PURPOSE. The Common Council of the City of  
24 Fort Wayne finds it to be in the best interests of the  
25 residents of the City of Fort Wayne and the general  
26 public to provide for the regulation of conduct it deems  
27 to be offensive, to prevent vice, disorder and  
immorality; and to promote public peace, health and  
safety, and to this end, the Common Council enacts this  
section.



1  
2 **Sec. 18-54 PERMITTING THE USE OF REAL ESTATE FOR ILLICIT**  
3 **DRUG ACTIVITY, GAMBLING OR PROSTITUTION.** No owner of  
4 real estate located in the City of Fort Wayne shall  
5 knowingly allow that real estate to be used as a site for  
6 any use or sale of illicit narcotics or controlled  
7 dangerous substances, gambling or prostitution after  
8 having received written notice pursuant to I.C. 36-7-9-  
9 25, from the Police Department of the City of Fort Wayne,  
10 that a present occupant or tenant of that property has  
11 been using or selling illicit narcotics or controlled  
12 dangerous substances, or allowing the using or selling of  
13 illicit narcotics or controlled dangerous substances at  
14 that property, or has been engaging in or allowing  
15 gambling or prostitution, or has otherwise been engaging  
16 in or allowed activity constituting a nuisance pursuant  
17 to I.C. 34-1-52-1. A legal or equitable owner of such  
18 real estate is deemed to have knowledge of such activity  
19 upon receipt of notice set forth herein. For the  
20 purposes of this Article, an owner of real estate is  
21 defined as any person who, alone, or jointly or severally  
22 with others shall have legal or equitable title to any  
23 dwelling or dwelling unit.

24  
25 **Sec. 18-55.** Notice is deemed to be given to the owner,  
26 upon receipt of Notice as indicated above, by the owner  
27 of record pursuant to the records and files of the Office  
28 of the Allen County Assessor's Office.

29  
30 **Sec. 18-56. DISCRIMINATION FORBIDDEN.** Nothing in this  
31 section shall be construed to encourage or authorize the  
32 discrimination by lessors against any person(s) based  
upon race, creed, religion, sex, age, or national origin.  
Rather, it is the intent of this article to hold persons  
accountable for acquiescing in or participating in the  
continued use of his/her property as the location of  
illegal drug activity, after having received notice as  
set forth in Section 18-55 above.

33  
34 **Sec. 18-57. REPORTS, INVESTIGATIONS AND NOTICES BY THE**  
35 **POLICE DEPARTMENT.**

36 (a) A complaint or report of suspected illegal  
37 activities constituting the use or sale of  
38 narcotics or controlled substances, or gambling,  
39 prostitution, or conduct constituting a nuisance  
40 pursuant to I.C. 34-1-52-1, by tenants, occupants  
41 and/or their visitors, guests or invites as  
42 observed by the lessor, third persons such as other  
43 tenants of the property, or persons residing or  
44 working in the vicinity of the property, or city  
45 officials, and/or representatives of agencies  
46 and/or departments of the City of Fort Wayne shall  
47 be submitted to the office of Narcotics and Vice  
48 Division of the Police Department of the City of  
49 Fort Wayne and each such report or complaint shall  
50 be individually logged in that office.

51 (b) Upon receipt of any report or complaint of  
52 such suspected illegal activities on real estate  
53 premises, a determination shall be made by the Fort  
54 Wayne Police Department as to the need and nature  
55 of any further investigation including, but not  
56 limited to, the necessity for surveillance by the  
57 Police Department of such real estate premises.



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2 (c) Upon completion of investigation by the Fort  
3 Wayne Police Department revealing that such  
4 suspected illegal activity is taking place at a  
5 particular premises, a warning letter shall be sent  
6 by the Fort Wayne Police Department to the owner of  
7 the real estate and a copy to the tenant/occupant  
8 whose premise is the subject of the investigation,  
9 by certified mail, return receipt requested,  
10 informing the owner of the investigation revealed  
11 the suspected illegal activity and the fact that  
12 there is an on-going investigation. The warning  
13 letter shall inform the owner of his/her choice to  
14 take action to abate such suspected illegal  
15 activity and of the intent of the Fort Wayne Police  
16 Department, if its on-going investigation indicates  
17 such suspected illegal activity has not ceased, to  
18 take further legal action.

11 (d) Once a search warrant has been obtained to  
12 search the real estate premises for narcotics or  
13 controlled substances, or for any other evidence  
14 related to such suspected illegal activity, a  
15 second letter which shall be sent to the owner of  
16 the real estate, by certified mail, return receipt  
17 requested, shall inform the owner that such  
18 warrant was served, that the investigation at the  
19 premises is continuing, and that legal proceedings  
20 may be commenced pursuant to this Article. Such  
21 letter shall inform the owner of his/her choice to  
22 take some form of remedial action. A copy of the  
23 letter shall be sent to the Chief of Police, the  
24 City Attorney's Office and to the tenant/occupant  
25 of the premises for which a search warrant is  
26 obtained.

19 (e) Upon receipt of a copy of the second letter  
20 issued under Section 18-57(d) of this Article, the  
21 City Attorney's office may proceed under I.C. 34-1-  
22 52-2(b) to abate or enjoin any suspected illegal  
23 activity as defined herein constituting a nuisance  
24 as defined in I.C. 34-1-52-1, and/or to advise the  
25 Police Department of the City of Fort Wayne to  
26 issue a notice pursuant to Section 18-54 and 18-55  
27 of this Article. The notice shall advise that  
28 legal proceedings may be instituted against the  
29 owner of real estate pursuant to this Article and  
30 shall also inform the owner of his/her choice to  
31 commence eviction proceedings pursuant to Section  
32 18-59 of this Article.

27 **Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION.**  
28 Conviction for a violation of this Article will be  
29 determined by the appropriate judicial authority based  
30 upon the totality of the circumstances present,  
31 including, but not limited to that the owner has received  
32 notices of suspected illegal activity pursuant to Secs.  
18-54, 18-55 and 18-57 of this Article.



1  
2 **Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE.** No  
3 person shall be charged with the violation of this  
4 article if such person:

- 5 a) Has instituted eviction proceedings within  
6 thirty (30) days of receipt of notice of  
7 criminal activities in accordance with Section  
8 18-54 above, against the tenant whose  
9 suspected criminal activities would otherwise  
10 give rise to potential liability under this  
11 article; and,  
12 b) Has completed the eviction proceedings within  
13 thirty (30) days of commencement of the  
14 proceedings.  
15 c) If any eviction proceedings are not completed  
16 within thirty (30) days by reason of court  
17 ordered delays in such proceedings, the person  
18 charged with a violation of this Article must,  
19 nonetheless, move forward expeditiously with  
20 any such eviction proceeding.

21 **Sec. 18-60. MULTIPLE UNIT DWELLINGS.** In the case of a  
22 multiple unit dwelling, the only person(s) necessary to  
23 name in an eviction proceeding is the tenant/occupant  
24 occupying the actual unit involved with the suspected  
25 illegal activity described herein.

26 **Sec. 18-61. FILING OF CRIMINAL CHARGES.** Charging an  
27 owner of real estate with a violation of this Article  
28 shall be an adjunct to, and not substitution for, any  
29 criminal charges filed as a result of investigation by  
30 the Police Department against occupants or tenants of  
31 that owner's real estate premises for use or sale of  
32 illicit drugs or controlled dangerous substances,  
gambling, prostitution or conduct constituting a nuisance  
pursuant to I.C. 34-1-52-1, or Section 18-35 of the  
Municipal Code of the City of Fort Wayne.

**Sec. 18-62. ASSISTANCE BY CHIEF OF POLICE.** The Chief of  
Police shall use reasonable efforts to train, educate and  
assist owners of real estate in avoiding placing tenants  
or occupants in their real estate who are known violators  
of illegal activities enumerated herein.



1           Sec. 18-63: LIMITED INDEMNIFICATION OF OWNERS OF  
2 REAL ESTATE. The City of Fort Wayne shall provide a  
3 limited indemnification to an owner of real estate  
4 located in the City of Fort Wayne, subject to the  
5 following conditions:

6           1. That the owner of real estate shall have  
7 received the written notice required by Section 18-  
8 54 of this Article from the Police Department of  
9 the City of Fort Wayne advising that a present  
10 occupant or tenant of the property of that owner of  
11 real estate has been using or selling illicit  
12 narcotics or controlled dangerous substances or  
13 allowing the using or selling of illicit narcotics  
14 or controlled dangerous substances at that  
15 property, or who has been engaging in or allowing  
16 gambling or prostitution or as otherwise been  
17 engaging in or allowing activity constituting a  
18 nuisance pursuant to I.C. 34-1-52-1.

19           2. That the owner of real estate has instituted  
20 eviction proceedings with thirty (30) days of  
21 receipt of notice of suspected illegal activities  
22 in accordance with Section 18-54 of this article  
23 against a tenant whose suspected criminal  
24 activities would otherwise give rise to potential  
25 liability under this article.

26           3. That the owner of real estate shall give no  
27 less than thirty (30) days notice to the City  
28 Attorney, by certified mail, return-receipt  
29 requested, of the trial date for any eviction  
30 proceedings and a list containing the names and  
31 addresses of all witnesses the owner of real estate  
32 intends to call at the hearing.

          4. That the City Attorney, upon receipt of the  
notice and list of witnesses shall have the right  
to provide the owner of real estate with the names  
and addresses of additional other witnesses  
including but not limited to witnesses from the  
Fort Wayne Police Department whose presence shall  
be required at the hearing on the eviction  
proceedings.

          5. All witnesses listed by either the owner of  
real estate and/or the City Attorney's office shall  
be subpoenaed by the owner of real estate in proper  
and legal fashion, and be allowed to testify.

          6. The tenant involved as a defendant in the  
eviction proceedings shall prevail on the merits,  
not by reason of procedural irregularities but by  
sole reason that a court finds after trial that the  
illegal activity alleged in the notice the owner of  
real estate had received pursuant to Section 18-54  
of this article, did not, in fact, take place.

          7. The tenant institutes legal proceedings against  
the owner of real estate in the form of a counter  
claim or separate action and obtains a judgment for  
damages against the owner of real estate by reason  
of the tenant having prevailed on the merits in  
accordance with paragraph 6 above.

          8. The owner of real estate completes whatever  
steps he/she chooses to undertake to seek review  
of the judgment by Motion to Correct Errors and/or  
appeal.



1 9. The limited indemnification by the City of Fort  
2 Wayne shall be restricted solely to those damages  
3 assessed by judgment against the owner of real  
4 estate as set out aforesaid but shall not, in any  
5 event, include any attorney's fees incurred by the  
6 owner of real estate in connection with the  
enforcement of any of the terms of this article;  
but will include either the reasonable attorney's  
fees incurred in the defense of legal proceedings  
brought by a tenant pursuant to paragraph 7 above  
regardless of the outcome of the proceedings, or  
the provision of the legal services by the City of  
Fort Wayne, at the City's option.

7 Sec. 18-64. LIST TO BE KEPT BY POLICE DEPARTMENT. The  
8 Police Department shall keep a list of the names and  
9 addresses of all tenants/occupants to whom copies of  
10 letters sent pursuant to Sec. 18-57 (d) of this  
article, and shall make the names available to members of  
the public requesting same in reference to potential  
renters of real estate in the City.

11 Sec. 18-65. PENALTY. Whoever violates any provision of  
12 this section shall, upon conviction thereof, in a sum up  
13 to Two Thousand Five Hundred Dollars (\$2,500.00) and  
costs of prosecution. Each day a violation of this  
article continues constitutes a separate offense.

14 Sec. 2 This Ordinance shall be in full force and effect  
15 60 days after its passage by the Common Council and approved  
16 by the Mayor of the City of Fort Wayne and proper legal  
17 publication, during which period owners of real estate in the  
18 City of Fort Wayne, Indiana shall have the opportunity to  
19 prepare lease documents for execution by their tenants, which  
20 lease documents take into consideration the existence of this  
21 ordinance.

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COUNCILMEMBER



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14 and the Mayor of the City of Fort Wayne have determined this  
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18 Substances, Gambling or Prostitution" is necessary in order to  
19 give the Police Department and other departments and agencies  
20 of the City of Fort Wayne additional means to utilize in  
21 building a stronger and safer city; and

22 WHEREAS, the addition of this Article III to Chapter 18  
23 of the Municipal Code of the City of Fort Wayne promotes the  
24 public safety and welfare of the citizens of the City of Fort  
25 Wayne, and will be in the best interests of the City.

26 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
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5 in the City of Fort Wayne shall knowingly allow that real  
6 estate to be used as a site for any use or sale of  
7 illicit narcotics or controlled dangerous substances,  
8 gambling or prostitution after having received written  
9 notice pursuant to I.C. §36-7-9-25, from the Police  
10 Department of the City of Fort Wayne, that a present  
11 occupant or tenant of that property has been using or  
12 selling illicit narcotics or controlled dangerous  
13 substances, or allowing the using or selling of illicit  
14 narcotics or controlled dangerous substances at that  
15 property, or has been engaging in or allowing gambling or  
16 prostitution, or has otherwise been engaging in or  
17 allowed activity constituting a nuisance pursuant to I.C.  
18 34-1-52-1. A legal or equitable owner of such real  
19 estate is deemed to have knowledge of such activity upon  
20 receipt of notice set forth herein.

21  
22 **Sec. 18-55.** Notice is deemed to be given to the owner,  
23 upon receipt of Notice as indicated above, by the owner  
24 of record pursuant to the records and files of the Office  
25 of the Allen County Recorder's Office.

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27 **Sec. 18-56. DISCRIMINATION FORBIDDEN.** Nothing in this  
28 section shall be construed to encourage or authorize the  
29 discrimination by lessors against any person(s) based  
30 upon race, creed, religion, sex, age, or national origin.  
31 Rather, it is the intent of this article to hold persons  
32 accountable for acquiescing in or participating in the  
continued use of his/her property as the location of  
illegal drug activity, after having received notice as  
set forth in Section 18-55 above.

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34 **Sec. 18-57. REPORTS, INVESTIGATIONS AND NOTICES BY THE**  
35 **POLICE DEPARTMENT.**

36 (a) A complaint or report of suspected illegal  
37 activities constituting the use or sale of  
38 narcotics or controlled substances, or gambling,  
39 prostitution, or conduct constituting a nuisance  
40 pursuant to I.C. 34-1-52-1, by tenants, occupants  
41 and/or their visitors as observed by the lessor,  
42 third persons such as other tenants of the  
43 property, or persons residing or working in the  
44 vicinity of the property, or city officials, and/or  
45 representatives of agencies and/or departments of  
46 the City of Fort Wayne shall be submitted to the  
47 office of Narcotics and Vice Division of the Police  
48 Department of the City of Fort Wayne and each such  
49 report or complaint shall be individually logged in  
50 that office.

51 (b) Upon receipt of any report or complaint of  
52 such suspected illegal activities on real estate  
53 premises, a determination shall be made by the Fort  
54 Wayne Police Department as to the need and nature  
55 of any further investigation including, but not  
56 limited to, the necessity for surveillance by the  
57 Police Department of such real estate premises.



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3 (c) Upon completion of investigation by the Fort  
4 Wayne Police Department revealing that such  
5 suspected illegal activity is taking place at a  
6 particular premises, a warning letter shall be sent  
7 by the Fort Wayne Police Department to the owner of  
8 the real estate and a copy to the tenant whose  
9 rented premises are the subject of the  
10 investigation, by certified mail, return receipt  
11 requested, informing said owner of the  
12 investigation revealed said suspected illegal  
13 activity and the fact that there is an on-going  
14 investigation. Said warning letter shall inform  
15 the owner of his/her choice to take action to abate  
16 such suspected illegal activity and of the intent  
17 of the Fort Wayne Police Department, if its on-  
18 going investigation indicates such suspected  
19 illegal activity has not ceased, to take further  
20 legal action.

21  
22 (d) Once a search warrant has been obtained to  
23 search the real estate premises for narcotics or  
24 controlled substances, or for any other evidence  
25 related to such suspected illegal activity, a  
26 notice which shall be sent to the owner of the real  
27 estate, return receipt requested, shall inform the  
28 owner that such warrant was served and that legal  
29 proceedings may be commenced pursuant to this  
30 Ordinance. Such notice shall inform said owner of  
31 his/her choice to take some form of remedial action  
32 including eviction proceedings pursuant to section  
18-59 of this Ordinance. A copy of said notice  
shall be sent to the Chief of Police, the City  
Attorney's Office and to the tenant of the premises  
for which a search warrant is obtained.

20 **Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION.**  
21 Conviction for a violation of this Ordinance will be  
22 determined by the appropriate judicial authority based  
23 upon the totality of the circumstances present,  
24 including, but not limited to that the owner has received  
25 notices of suspected illegal activity pursuant to Secs.  
26 18-54, 18-55 and 18-57 of this Ordinance.

24 **Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE.** No  
25 person shall be charged with the violation of this  
26 article if such person:

- 26 a) Has instituted eviction proceedings within  
27 thirty (30) days of receipt of notice of  
28 criminal activities in accordance with Section  
29 18-54 above, against the tenant whose  
30 suspected criminal activities would otherwise  
31 give rise to potential liability under this  
32 article; and,
- 30 b) Has completed said eviction proceedings within  
31 thirty (30) days of commencement of said  
32 proceedings.



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3 c) If any eviction proceedings are not completed  
4 within thirty (30) days by reason of court  
5 ordered delays in such proceedings, the person  
6 charged with a violation of this Ordinance  
7 must, nonetheless, move forward expeditiously  
8 with any such eviction proceeding.

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10 Sec. 18-59. MULTIPLE UNIT DWELLINGS. In the case of a  
11 multiple unit dwelling, the only person(s) necessary to  
12 name in an eviction proceeding is the person occupying  
13 the actual unit involved with the activity suspected  
14 and/or the person(s) suspected of the activity described  
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16 Sec. 18-60. PENALTY. Whoever violates any provision of  
17 this section shall, upon conviction thereof, be fined the  
18 sum of Two Thousand Five Hundred Dollars (\$2,500.00) and  
19 costs of prosecution. Each day a violation of this  
20 article shall continue shall constitute a separate  
21 offense."

22 Sec. 18-61. FILING OF CRIMINAL CHARGES. Charging an  
23 owner of real estate with a violation of this Ordinance  
24 shall be an adjunct to, and not substitution for, any  
25 criminal charges filed as a result of investigation by  
26 the Police Department against occupants or tenants of  
27 that owner's real estate premises for use or sale of  
28 illicit drugs or controlled dangerous substances,  
29 gambling, prostitution or conduct constituting a nuisance  
30 pursuant to I.C. 34-1-52-1.

31 SECTION 2. This Ordinance shall be in full force and  
32 effect from and after its passage by the Common Council and  
33 approval by the Mayor and proper legal publication.

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COUNCILMEMBER

APPROVED AS TO FORM  
AND LEGALITY.

Stanley A. Levine  
Legal Advisor to  
Fort Wayne Common Council



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18-55. Notice is deemed to be given to the owner, upon receipt of Notice as indicated above, by the owner of record pursuant to the records and files of the Office of the Allen County Recorder's Office.

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18-57. CRITERIA FOR ESTABLISHING VIOLATIONS. The conviction for violation of this article will be determined by the appropriate judicial authority based upon the totality of the circumstances present, including but not limited to: That the owner, having received notice as set forth in Sections 18-54 and 18-55, of the following activities:

Suspected illegal activities by tenants and/or their visitors on that property as observed by the lessor, third parties such as other tenants of the property, or persons residing or working in the vicinity of the property, or City officials, and/or representatives of agencies and/or departments of the City of Fort Wayne.

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- a) Has instituted eviction proceedings within thirty (30) days of receipt of notice of criminal activities in accordance with Section 18-54 above, against the tenant whose suspected criminal activities would otherwise give rise to potential liability under this article; and,
- b) Has completed said eviction proceedings within thirty (30) days of commencement of said proceedings.

18-59. MULTIPLE UNIT DWELLINGS. In the case of a multiple unit dwelling, the "only" person(s) necessary to name in an eviction proceeding is the person occupying the actual unit involved with the activity suspected and/or the person(s) suspected of the activity described herein.

18-60. PENALTY. Whoever violates any provision of this section shall, upon conviction thereof, be fined the sum of Two Thousand Five Hundred Dollars (\$2,500.00) and costs of prosecution. Each day a violation of this article shall continue shall constitute a separate offense."

SECTION 2. This Ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor and proper legal publication.

  
COUNCILMEMBER



APPROVED AS TO FORM  
AND LEGALITY.

*Stanley A. Levine*

---

Stanley A. Levine  
Legal Advisor to  
Fort Wayne Common Council



BILL NO. G-92-08-41

REPORT OF THE COMMITTEE ON  
THE COMMITTEE OF THE WHOLE

DONALD J. SCHMIDT, CHAIR  
CLETUS R. EDMONDS, VICE CHAIR  
ALL COUNCIL MEMBERS

*10/11/92*  
*for 11/10/92*

WE, YOUR COMMITTEE ON THE COMMITTEE OF THE WHOLE TO WHOM WAS  
REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ of the Common Council  
of the City of Fort Wayne, Indiana, amending Chapter 18 of  
the Municipal Code of the City of Fort Wayne by adding a new  
Article III entitled "Real Estate which is Used For The Illegal Use  
or Sale of Narcotics or Controlled Substances"

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) ~~(RESOLUTION)~~

<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>	<u>NO REC</u>
<i>all Council members</i>			

DATED:

Sandra E. Kennedy  
City Clerk



Mark - 90

Passed

**PROPOSED AMENDMENT TO BILL NO. G-92-08-41**

Section 2 of this bill shall be amended to read as follows:

Sec. 2. This ordinance shall be in full force and effect <sup>60</sup>~~180~~ days after its passage by the Common Council and approved by the Mayor of the City of Fort Wayne and proper legal publication, during which period owners of real estate in the City of Fort Wayne, Indiana shall have the opportunity to prepare lease documents for execution by their tenants, which lease documents take into consideration the existence of this ordinance.



PROPOSED AMENDMENT TO BILL NO. G-92-08-41

Section 2 of this bill shall be amended to read as follows:

Sec. 2. This ordinance shall be in full force and effect ~~180~~ 60 days after its passage by the Common Council and approved by the Mayor of the City of Fort Wayne and proper legal publication, during which period owners of real estate in the City of Fort Wayne, Indiana shall have the opportunity to prepare lease documents for execution by their tenants, which lease documents take into consideration the existence of this ordinance.



V. Vale 9-0  
(Passed)

mark

PROPOSED AMENDMENT TO BILL NO. G-92-08-41

There shall be added to <sup>the</sup> said Ordinance the following new Section:

Sec. 18-63: LIMITED INDEMNIFICATION OF OWNERS OF REAL ESTATE. The City of Fort Wayne shall provide a limited indemnification to an owner of real estate located in the City of Fort Wayne, subject to the following conditions:

1. That <sup>the</sup> said owner of real estate shall have received the written notice required by Section 18-54 of this Article from the Police Department of the City of Fort Wayne, <sup>causing</sup> that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or who has been engaging in or allowing gambling or prostitution or as otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1.

2. That said owner of real estate has instituted eviction proceedings with thirty (30) days of receipt of notice of suspected illegal activities in accordance with Section 18-54 of this article against a tenant whose suspected criminal activities would otherwise give rise to potential liability under this article.

3. That said owner of real estate has either completed said ~~eviction proceedings~~ within thirty (30) days of commencement of said proceedings or, if any eviction proceedings are not completed within thirty (30) days by reason of Court ordered delays of such proceedings, said owner of real estate has moved forward expeditiously with any such eviction proceedings.

4. That said owner of real estate shall give no less than thirty (30) days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at said hearing.

5. That the City Attorney, upon receipt of said notice and list of witnesses shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses including but not limited to witnesses from the Fort Wayne Police Department whose presence shall be required at the hearing on the eviction proceedings.

6. All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by said owner of real estate in a proper and legal fashion, ~~and shall appear and testify at the trial.~~ <sup>and be allowed to testify.</sup>

7. The tenant involved as a defendant in said eviction proceedings shall prevail <sup>on</sup> the merits, not by reason of procedural



irregularities but <sup>by</sup> the sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to Section 18-54 of this article, did not, in fact, take place.

8. The tenant institutes legal proceedings against the owner of real estate <sup>in the form of a court claim by the owner's action</sup> and obtains a judgment for damages against the owner of real estate by reason of said tenant having prevailed on the merits in accordance with paragraph 7 above.

9. The owner of real estate completes whatever steps he/she chooses to undertake to seek review of said judgment by Motion to Correct Errors and/or appeal.

10. The limited indemnification by the City of Fort Wayne shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this article ~~and/or the defense of any legal proceedings brought by a tenant against said owner.~~

but will ~~include~~ <sup>include</sup> ~~the~~ <sup>the</sup> reasonable attorney fees <sup>incurred in the defense in legal proceedings</sup> - brought by the tenant against the owner as a result of the enforcement of this ord. or the ~~promise~~ <sup>promise</sup> of legal services by Fort Wayne by the city's option pursuant to 8 above regardless of outcome.



PROPOSED AMENDMENT TO BILL NO. G-92-08-41

There shall be added to said Ordinance the following new Section:

Sec. 18-63: LIMITED INDEMNIFICATION OF OWNERS OF REAL ESTATE.  
The City of Fort Wayne shall provide a limited indemnification to an owner of real estate located in the City of Fort Wayne, subject to the following conditions:

1. That said owner of real estate shall have received the written notice required by Section 18-54 of this Article from the Police Department of the City of Fort Wayne <sup>advising</sup> that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances or allowing the using or selling of illicit narcotics of controlled dangerous substances at that property, or who has been engaging in or allowing gambling or prostitution or as otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1.

2. That <sup>the</sup> said owner of real estate has instituted eviction proceedings with thirty (30) days of receipt of notice of suspected illegal activities in accordance with Section 18-54 of this article against a tenant whose suspected criminal activities would otherwise give rise to potential liability under this article.

3. That ~~said owner of real estate has either completed said eviction proceedings within thirty (30) days of commencement of said proceedings or, if any eviction proceedings are not completed within thirty (30) days by reason of Court ordered delays of such proceedings, said owner of real estate has moved forward expeditiously with any such eviction proceedings.~~

<sup>3</sup>/<sub>4</sub>. That <sup>the</sup> said owner of real estate shall give no less than thirty (30) days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at ~~said~~ hearing.

<sup>4</sup>/<sub>5</sub>. That the City Attorney, upon receipt of <sup>the</sup> said notice and list of witnesses shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses including but not limited to witnesses from the Fort Wayne Police Department whose presence shall be required at the hearing on the eviction proceedings.

<sup>5</sup>/<sub>6</sub>. All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by <sup>the</sup> said owner of real estate in a proper and legal fashion, ~~and shall appear and testify at the trial.~~ <sup>and be allowed to testify.</sup>

<sup>6</sup>/<sub>7</sub>. The tenant involved as a defendant in <sup>the</sup> said eviction proceedings shall prevail, <sup>on</sup> the merits, not by reason of procedural



irregularities but <sup>by</sup> the sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to Section 18-54 of this article, did not, in fact, take place.

7  
8. <sup>in the form of a counterclaim or separate action</sup> The tenant institutes legal proceedings against the owner of real estate and obtains a judgment for damages against the owner of real estate by reason of ~~said~~ tenant having prevailed on the merits in accordance with paragraph 7 above.

8  
9. The owner of real estate completes whatever steps he/she chooses to undertake to seek review of ~~said~~ judgment by Motion to Correct Errors and/or appeal. <sup>de</sup>

9  
10. The limited indemnification by the City of Fort Wayne shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this article; and/or the defense of any legal proceedings brought by a tenant against said owner. <sup>but will include</sup>  
<sup>either the reasonable attys fees incurred in the defense of</sup>  
<sup>legal proceedings brought by a tenant against the owner</sup>  
<sup>as the result of an error covered by this ordinance, or the</sup>  
<sup>provision of the legal services by the City of Fort Wayne,</sup>  
<sup>at the City's option.</sup>

outcome of <sup>the</sup> ~~said~~ proceedings



ADD<sup>n</sup> 18-57<sup>64</sup> Police Department to keep lists of addresses  
of ~~letters~~ sent pursuant to ~~§~~ section 18-57(a) and (d)  
of this Article.

The Police department shall ~~to~~ keep a list  
of ~~all~~ the names and addresses of all tenants/  
occupants to whom copies of letters sent pursuant  
to sec. 18-57 ~~(b) and (d)~~ (d) of this Article, and  
shall make ~~said~~ <sup>the</sup> names available to members  
of the public requesting same in reference to  
potential renters of real estate in this city.

X If you strike 18-57(a)  
you keep list for said letters  
only

ps 2 Time 14



PROPOSED AMENDMENT TO BILL NO. G-92-08-41

The paragraph entitled Sec. 18-63. **PENALTY**, shall be amended to read as follows:

Sec. 18-63. **PENALTY**. Whoever violates any provision of this section shall, upon conviction thereof, be fined <sup>in a</sup> the sum of ~~not less than One Hundred Dollars (\$100.00) and no more than Two Thousand Five Hundred Dollars (\$2,500.00)~~ <sup>up to</sup> and costs of prosecution. Each day a violation of this article continues constitutes a separate offense.

~~not less than~~ <sup>\$</sup>1,000



PROPOSED AMENDMENT TO BILL NO. G-92-08-41

The paragraph entitled Sec. 18-63. **PENALTY**, shall be amended to read as follows:

Sec. 18-63. **PENALTY.** Whoever violates any provision of this section shall, upon conviction thereof, be fined the sum of not less than One Hundred Dollars (\$100.00) and no more than Two Thousand Five Hundred Dollars (\$2,500.00) and costs of prosecution. Each day a violation of this article continues constitutes a separate offense.



1  
2 (c) Upon completion of investigation by the Fort  
3 Wayne Police Department revealing that such  
4 suspected illegal activity is taking place at a  
5 particular premises, a warning letter shall be sent  
6 by the Fort Wayne Police Department to the owner of  
7 the real estate and a copy to the tenant/occupant  
8 whose premise is the subject of the investigation,  
9 by certified mail, return receipt requested,  
10 informing said owner of the investigation revealed  
11 said suspected illegal activity and the fact that  
12 there is an on-going investigation. Said warning  
13 letter shall inform the owner of his/her choice to  
14 take action to abate such suspected illegal  
15 activity and of the intent of the Fort Wayne Police  
16 Department, if its on-going investigation indicates  
17 such suspected illegal activity has not ceased, to  
18 take further legal action.

11 (d) Once a search warrant has been obtained to  
12 search the real estate premises for narcotics or  
13 controlled substances, or for any other evidence  
14 related to such suspected illegal activity, a  
15 second letter which shall be sent to the owner of  
16 the real estate, by certified mail, return receipt  
17 requested, shall inform the owner that such  
18 warrant was served, that the investigation at said  
19 premises is continuing, and that legal proceedings  
20 may be commenced pursuant to this Article. Such  
21 letter shall inform said owner of his/her choice to  
22 take some form of remedial action. A copy of said  
23 letter shall be sent to the Chief of Police, the  
24 City Attorney's Office and to the tenant/owner of  
25 the premises for which a search warrant is  
26 obtained.

#2 passed  
occ spent

19 (e) Upon receipt of a copy of the second letter  
20 issued under Section 18-57(d) of this Article, the  
21 City Attorney's office may proceed under I.C. 34-1-  
22 52-2(b) to abate or enjoin any suspected illegal  
23 activity as defined herein constituting a nuisance  
24 as defined in I.C. 34-1-52-1, and/or to advise the  
25 Police Department of the City of Fort Wayne to  
26 issue a notice pursuant to Section 18-54 and 18-55  
27 of this Article. Prior to the issuance of this  
28 notice to the owner, the  
29 tenant/occupant/visitor/guest or invitee shall be  
30 arrested. Said notice shall advise that legal  
31 proceedings may be instituted against the owner of  
32 real estate pursuant to this Article and shall also  
inform said owner of his/her choice to commence  
eviction proceedings pursuant to Section 18-59 of  
this Article.

#3  
okate

28 **Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION.**  
29 Conviction for a violation of this Article will be  
30 determined by the appropriate judicial authority based  
31 upon the totality of the circumstances present,  
32 including, but not limited to that the owner has received  
notices of suspected illegal activity pursuant to Secs.  
18-54, 18-55 and 18-57 of this Article.



SECTION 2. Provision of legal counsel by the City of Fort Wayne. In the event that any tenant/occupant/visitor/guest or invitee ~~threatens or~~ initiates suit against the owner of real estate for the owner's actions in compliance with this Article, the City of Fort Wayne shall provide legal representation for said owner.

**SECTION 3.** This Ordinance shall be in full force and effect from and after its passage by the Common Council and approval by the Mayor and proper legal publication.

COUNCILMEMBER

APPROVED AS TO FORM  
AND LEGALITY.

Stanley A. Levine  
Legal Advisor to  
Fort Wayne Common Council





## THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ROOM 122 • FORT WAYNE, INDIANA 46802 • 219-427-1208

SANDRA E. KENNEDY, CITY CLERK

November 24, 1992

Ms. Connie Lambert  
Fort Wayne Newspapers, Inc.  
600 West Main Street  
Fort Wayne, IN 46802

Dear Ms. Lambert:

Please give the attached full coverage on the dates of  
November 27 and December 4, 1992, in both the News  
Sentinel and Journal Gazette.

RE: Legal Notice for Common Council  
of Fort Wayne, IN

Bill No. G-92-08-41 (as amended) (as amended)  
General Ordinance No. G-48-92  
Real Estate which is Used for The  
Illegal Use or Sale of Narcotics or  
Controlled Substances, Gambling or  
Prostitution

Please send us 4 copies of the Publisher's Affidavit from  
both newspapers.

Thank you.

Sincerely yours,

Sandra E. Kennedy  
City Clerk

SEK/ne  
ENCL: 1



LEGAL NOTICE

Notice is hereby given that on the 10th day of  
November, 1992, the Common Council of the City  
of Fort Wayne, Indiana, in a Regular Session did pass  
the following Bill No. G-92-08-41 (as amended) (as amended)-- General  
Ordinance No. G-48-92 to-wit:

BILL NO. G-92-08-41 (AS AMENDED) (AS AMENDED)

GENERAL ORDINANCE NO. G-48-92

AN ORDINANCE of the Common Council of the  
City of Fort Wayne, Indiana amending  
Chapter 18 of the Municipal Code of the  
City of Fort Wayne by adding a new  
Article III entitled "Real Estate which  
is Used For The Illegal Use or Sale of  
Narcotics or Controlled Substances,  
Gambling or Prostitution."

WHEREAS, the Common Council of the City of Fort Wayne,  
and the Mayor of the City of Fort Wayne have determined this  
amendment to Chapter 18 of the Municipal Code of the City of  
Fort Wayne, adding a new Article III "Real Estate which is  
Used For The Illegal Sales of Narcotics or Controlled  
Substances, Gambling or Prostitution" is necessary in order to  
give the Police Department and other departments and agencies  
of the City of Fort Wayne additional means to utilize in  
building a stronger and safer city; and

WHEREAS, the addition of this Article III to Chapter 18  
of the Municipal Code of the City of Fort Wayne promotes the  
public safety and welfare of the citizens of the City of Fort  
Wayne, and will be in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
THE CITY OF FORT WAYNE, INDIANA AS FOLLOWS:

SECTION 1. Chapter 18 of the Municipal Code of the City  
of Fort Wayne, Indiana is hereby amended by adding thereto a  
new Article III "Real Estate Which Is Used For The Illegal Use  
Or Sales Of Narcotics Or Controlled Dangerous Substances,  
Gambling Or Prostitution," which shall read as follows:

Sec. 18-53. PURPOSE. The Common Council of the City of  
Fort Wayne finds it to be in the best interests of the  
residents of the City of Fort Wayne and the general  
public to provide for the regulation of conduct it deems  
to be offensive, to prevent vice, disorder and  
immorality; and to promote public peace, health and  
safety, and to this end, the Common Council enacts this  
section.



1  
2 **Sec. 18-54 PERMITTING THE USE OF REAL ESTATE FOR ILLICIT**  
3 **DRUG ACTIVITY, GAMBLING OR PROSTITUTION.** No owner of  
4 real estate located in the City of Fort Wayne shall  
5 knowingly allow that real estate to be used as a site for  
6 any use or sale of illicit narcotics or controlled  
7 dangerous substances, gambling or prostitution after  
8 having received written notice pursuant to I.C. 36-7-9-  
9 25, from the Police Department of the City of Fort Wayne,  
10 that a present occupant or tenant of that property has  
11 been using or selling illicit narcotics or controlled  
12 dangerous substances, or allowing the using or selling of  
13 illicit narcotics or controlled dangerous substances at  
14 that property, or has been engaging in or allowing  
15 gambling or prostitution, or has otherwise been engaging  
16 in or allowed activity constituting a nuisance pursuant  
17 to I.C. 34-1-52-1. A legal or equitable owner of such  
18 real estate is deemed to have knowledge of such activity  
19 upon receipt of notice set forth herein. For the  
20 purposes of this Article, an owner of real estate is  
21 defined as any person who, alone, or jointly or severally  
22 with others shall have legal or equitable title to any  
23 dwelling or dwelling unit.

24  
25 **Sec. 18-55.** Notice is deemed to be given to the owner,  
26 upon receipt of Notice as indicated above, by the owner  
27 of record pursuant to the records and files of the Office  
28 of the Allen County Assessor's Office.

29  
30 **Sec. 18-56. DISCRIMINATION FORBIDDEN.** Nothing in this  
31 section shall be construed to encourage or authorize the  
32 discrimination by lessors against any person(s) based  
upon race, creed, religion, sex, age, or national origin.  
Rather, it is the intent of this article to hold persons  
accountable for acquiescing in or participating in the  
continued use of his/her property as the location of  
illegal drug activity, after having received notice as  
set forth in Section 18-55 above.

33  
34 **Sec. 18-57. REPORTS, INVESTIGATIONS AND NOTICES BY THE**  
35 **POLICE DEPARTMENT.**

36 (a) A complaint or report of suspected illegal  
37 activities constituting the use or sale of  
38 narcotics or controlled substances, or gambling,  
39 prostitution, or conduct constituting a nuisance  
40 pursuant to I.C. 34-1-52-1, by tenants, occupants  
41 and/or their visitors, guests or invites as  
42 observed by the lessor, third persons such as other  
43 tenants of the property, or persons residing or  
44 working in the vicinity of the property, or city  
45 officials, and/or representatives of agencies  
46 and/or departments of the City of Fort Wayne shall  
47 be submitted to the office of Narcotics and Vice  
48 Division of the Police Department of the City of  
49 Fort Wayne and each such report or complaint shall  
50 be individually logged in that office.

51 (b) Upon receipt of any report or complaint of  
52 such suspected illegal activities on real estate  
53 premises, a determination shall be made by the Fort  
54 Wayne Police Department as to the need and nature  
55 of any further investigation including, but not  
56 limited to, the necessity for surveillance by the  
57 Police Department of such real estate premises.



1  
2 (c) Upon completion of investigation by the Fort  
3 Wayne Police Department revealing that such  
4 suspected illegal activity is taking place at a  
5 particular premises, a warning letter shall be sent  
6 by the Fort Wayne Police Department to the owner of  
7 the real estate and a copy to the tenant/occupant  
8 whose premise is the subject of the investigation,  
9 by certified mail, return receipt requested,  
10 informing the owner of the investigation revealed  
the suspected illegal activity and the fact that  
there is an on-going investigation. The warning  
letter shall inform the owner of his/her choice to  
take action to abate such suspected illegal  
activity and of the intent of the Fort Wayne Police  
Department, if its on-going investigation indicates  
such suspected illegal activity has not ceased, to  
take further legal action.

11 (d) Once a search warrant has been obtained to  
12 search the real estate premises for narcotics or  
13 controlled substances, or for any other evidence  
14 related to such suspected illegal activity, a  
15 second letter which shall be sent to the owner of  
16 the real estate, by certified mail, return receipt  
17 requested, shall inform the owner that such  
18 warrant was served, that the investigation at the  
19 premises is continuing, and that legal proceedings  
20 may be commenced pursuant to this Article. Such  
21 letter shall inform the owner of his/her choice to  
22 take some form of remedial action. A copy of the  
23 letter shall be sent to the Chief of Police, the  
24 City Attorney's Office and to the tenant/occupant  
25 of the premises for which a search warrant is  
26 obtained.

27 (e) Upon receipt of a copy of the second letter  
28 issued under Section 18-57(d) of this Article, the  
29 City Attorney's office may proceed under I.C. 34-1-  
30 52-2(b) to abate or enjoin any suspected illegal  
31 activity as defined herein constituting a nuisance  
32 as defined in I.C. 34-1-52-1, and/or to advise the  
Police Department of the City of Fort Wayne to  
issue a notice pursuant to Section 18-54 and 18-55  
of this Article. The notice shall advise that  
legal proceedings may be instituted against the  
owner of real estate pursuant to this Article and  
shall also inform the owner of his/her choice to  
commence eviction proceedings pursuant to Section  
18-59 of this Article.

27 **Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION.**  
28 Conviction for a violation of this Article will be  
29 determined by the appropriate judicial authority based  
30 upon the totality of the circumstances present,  
31 including, but not limited to that the owner has received  
32 notices of suspected illegal activity pursuant to Secs.  
18-54, 18-55 and 18-57 of this Article.



1  
2 **Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE.** No  
3 person shall be charged with the violation of this  
4 article if such person:

- 5 a) Has instituted eviction proceedings within  
6 thirty (30) days of receipt of notice of  
7 criminal activities in accordance with Section  
8 18-54 above, against the tenant whose  
9 suspected criminal activities would otherwise  
10 give rise to potential liability under this  
11 article; and,  
12 b) Has completed the eviction proceedings within  
13 thirty (30) days of commencement of the  
14 proceedings.  
15 c) If any eviction proceedings are not completed  
16 within thirty (30) days by reason of court  
17 ordered delays in such proceedings, the person  
18 charged with a violation of this Article must,  
19 nonetheless, move forward expeditiously with  
20 any such eviction proceeding.

21 **Sec. 18-60. MULTIPLE UNIT DWELLINGS.** In the case of a  
22 multiple unit dwelling, the only person(s) necessary to  
23 name in an eviction proceeding is the tenant/occupant  
24 occupying the actual unit involved with the suspected  
25 illegal activity described herein.

26 **Sec. 18-61. FILING OF CRIMINAL CHARGES.** Charging an  
27 owner of real estate with a violation of this Article  
28 shall be an adjunct to, and not substitution for, any  
29 criminal charges filed as a result of investigation by  
30 the Police Department against occupants or tenants of  
31 that owner's real estate premises for use or sale of  
32 illicit drugs or controlled dangerous substances,  
gambling, prostitution or conduct constituting a nuisance  
pursuant to I.C. 34-1-52-1, or Section 18-35 of the  
Municipal Code of the City of Fort Wayne.

**Sec. 18-62. ASSISTANCE BY CHIEF OF POLICE.** The Chief of  
Police shall use reasonable efforts to train, educate and  
assist owners of real estate in avoiding placing tenants  
or occupants in their real estate who are known violators  
of illegal activities enumerated herein.



1           Sec. 18-63: LIMITED INDEMNIFICATION OF OWNERS OF  
2 REAL ESTATE. The City of Fort Wayne shall provide a  
3 limited indemnification to an owner of real estate  
4 located in the City of Fort Wayne, subject to the  
5 following conditions:

6           1. That the owner of real estate shall have  
7 received the written notice required by Section 18-  
8 54 of this Article from the Police Department of  
9 the City of Fort Wayne advising that a present  
10 occupant or tenant of the property of that owner of  
11 real estate has been using or selling illicit  
12 narcotics or controlled dangerous substances or  
13 allowing the using or selling of illicit narcotics  
14 or controlled dangerous substances at that  
15 property, or who has been engaging in or allowing  
16 gambling or prostitution or as otherwise been  
17 engaging in or allowing activity constituting a  
18 nuisance pursuant to I.C. 34-1-52-1.

19           2. That the owner of real estate has instituted  
20 eviction proceedings with thirty (30) days of  
21 receipt of notice of suspected illegal activities  
22 in accordance with Section 18-54 of this article  
23 against a tenant whose suspected criminal  
24 activities would otherwise give rise to potential  
25 liability under this article.

26           3. That the owner of real estate shall give no  
27 less than thirty (30) days notice to the City  
28 Attorney, by certified mail, return-receipt  
29 requested, of the trial date for any eviction  
30 proceedings and a list containing the names and  
31 addresses of all witnesses the owner of real estate  
32 intends to call at the hearing.

          4. That the City Attorney, upon receipt of the  
notice and list of witnesses shall have the right  
to provide the owner of real estate with the names  
and addresses of additional other witnesses  
including but not limited to witnesses from the  
Fort Wayne Police Department whose presence shall  
be required at the hearing on the eviction  
proceedings.

          5. All witnesses listed by either the owner of  
real estate and/or the City Attorney's office shall  
be subpoenaed by the owner of real estate in proper  
and legal fashion, and be allowed to testify.

          6. The tenant involved as a defendant in the  
eviction proceedings shall prevail on the merits,  
not by reason of procedural irregularities but by  
sole reason that a court finds after trial that the  
illegal activity alleged in the notice the owner of  
real estate had received pursuant to Section 18-54  
of this article, did not, in fact, take place.

          7. The tenant institutes legal proceedings against  
the owner of real estate in the form of a counter  
claim or separate action and obtains a judgment for  
damages against the owner of real estate by reason  
of the tenant having prevailed on the merits in  
accordance with paragraph 6 above.

          8. The owner of real estate completes whatever  
steps he/she chooses to undertake to seek review  
of the judgment by Motion to Correct Errors and/or  
appeal.

1 .9. The limited indemnification by the City of Fort  
2 Wayne shall be restricted solely to those damages  
3 assessed by judgment against the owner of real  
4 estate as set out aforesaid but shall not, in any  
5 event, include any attorney's fees incurred by the  
6 owner of real estate in connection with the  
7 enforcement of any of the terms of this article;  
8 but will include either the reasonable attorney's  
9 fees incurred in the defense of legal proceedings  
10 brought by a tenant pursuant to paragraph 7 above  
11 regardless of the outcome of the proceedings, or  
12 the provision of the legal services by the City of  
13 Fort Wayne, at the City's option.

14 Sec. 18-64. LIST TO BE KEPT BY POLICE DEPARTMENT. The  
15 Police Department shall keep a list of the names and  
16 addresses of all tenants/occupants to whom copies of  
17 letters sent pursuant to Sec. 18-57 (d) of this  
18 article, and shall make the names available to members of  
19 the public requesting same in reference to potential  
20 renters of real estate in the City.

21 Sec. 18-65. PENALTY. Whoever violates any provision of  
this section shall, upon conviction thereof, in a sum up  
to Two Thousand Five Hundred Dollars (\$2,500.00) and  
costs of prosecution. Each day a violation of this  
article continues constitutes a separate offense.

Sec. 2 This Ordinance shall be in full force and effect  
60 days after its passage by the Common Council and approved  
by the Mayor of the City of Fort Wayne and proper legal  
publication, during which period owners of real estate in the  
City of Fort Wayne, Indiana shall have the opportunity to  
prepare lease documents for execution by their tenants, which  
lease documents take into consideration the existence of this  
ordinance.

Donald J. Schmidt  
COUNCILMEMBER

Read the third time in full and on motion by Schmidt, and  
duly adopted, placed on its passage. PASSED by the following vote:

AYES: Nine  
Bradbury, Edmonds, GiaQuinta, Henry, Long,  
Lunsey, Ravine, Schmidt, Talarico  
NAYS: None  
ABSENT: None  
ABSTAINED: None

DATED: 11-10-92 Sandra E. Kennedy  
City Clerk

Passed and adopted by the Common Council of the City of  
Fort Wayne, Indiana, as General Ordinance No. G-48-92 on the 10th  
day of November, 1992

ATTEST: SEAL

Sandra E. Kennedy Thomas C. Henry  
City Clerk Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne,  
Indiana, on the 12th day of November, 1992, at the hour of 1:00  
P.M., E.S.T.

Sandra E. Kennedy  
City Clerk

Approved and signed by me this 20th day of November,  
1992, at the hour of 11:00 o'clock A.M., E.S.T.

Paul Helmke  
Mayor

I, The Clerk of the City of Fort Wayne, Indiana do hereby certify  
that the above and foregoing is a full, true and complete copy of



Read the first time in full and on motion by Schmidt,  
and duly adopted, read the second time by title and referred to the  
Committee on The Committee of the Whole (and the City Plan Commission  
for recommendation) and Public Hearing to be held after due legal notice, at  
the Common Council Council Conference Room 128, City-County Building, Fort  
Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_\_, at \_\_\_\_\_ o'clock  
\_\_\_\_\_, M., E.S.T.

DATED: 8-25-92

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Schmidt,  
and duly adopted, placed on its passage. PASSED ~~LOST~~  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>	<u>0</u>		
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 11-10-92

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXTATION) (APPROPRIATION) (GENERAL)  
(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 1548-92  
on the 10th day of November, 1992

ATTEST:

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

(SEAL)

Thomas E. Henry  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 12th day of November, 1992,  
at the hour of 1:00 o'clock P., M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 20th day of November,  
1992, at the hour of 11:00 o'clock A., M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR

FW Common Council

To: The Journal-Gazette Dr.

(Governmental Unit)

P.O. Box 100  
Fort Wayne, IN

ALLEN County, Indiana

PUBLISHER'S CLAIM

LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set) -- number of equivalent lines

Head -- number of lines

Body -- number of lines

Tail -- number of lines

Total number of lines in notice

COMPUTATION OF CHARGES

332 lines, 1 columns wide equals 332 equivalent lines  
at 495 cents per line

\$ 164.34

Additional charge for notices containing rule or tabular work (50 percent of above amount)

Charge for extra proofs of publication (\$1.00 for each proof in excess of two)

2.00

TOTAL AMOUNT OF CLAIM

\$ 166.34

DATA FOR COMPUTING COST

Width of single column 12.5 ems  
Number of insertions 2  
Size of type 6 point

Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date: Dec 4, 19 92

Title: Clerk

PUBLISHER'S AFFIDAVIT

State of Indiana )  
) ss:  
Allen County )

ATTACH COPY  
OF ADVERTISEMENT  
HERE

Personally appeared before me, a notary public in and for said county and state, the undersigned Cindy Gillenwater who, being duly sworn, says that he/she is Clerk of the The Journal-Gazette newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time, the dates of publication being as follows:

11/27/92 12/4/92

Subscribed and sworn to before me this 4th day of Dec, 19 92

Notary Public Whitley County, IN  
SHELLEY R. LARUE

My commission expires: March 3, 1994



FW Common Council  
(Governmental Unit)To: The News-Sentinel Dr.  
P.O. Box 100  
Fort Wayne, IN

ALLEN County, Indiana

## PUBLISHER'S CLAIM

## LINE COUNT

Display Matter (Must not exceed two actual lines, neither of which shall total more than four solid lines of type in which the body of the advertisement is set)  
-- number of equivalent lines

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Pursuant to the provisions and penalties of Chapter 155, Acts 1953,

I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

Date: Dec 4, 19 92Title: Clerk

## PUBLISHER'S AFFIDAVIT

State of Indiana )

) ss:

Allen County )

ATTACH COPY  
OF ADVERTISEMENT  
HERE

Personally appeared before me, a notary public in and for said county and state, the undersigned Cindy Gillenwater who, being duly sworn, says that he/she is Clerk of the The News-Sentinel newspaper of general circulation printed and published in the English language in the (city) (town) of Fort Wayne, IN in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 2 time 11/27/92 12/4/92, the dates of publication being as follows:

Subscribed and sworn to before me this 4th day of Dec, 19 92Notary Public Whitley County, IN  
SHELLEY R. LARUEMy commission expires: March 3, 1994







notice is hereby given that on the 10th day of November, 1992, the Common Council of the City of Fort Wayne, Indiana, in a Regular Session did pass the following Bill No. G-92-08-41 (as amended) (as amended) General Ordinance No. G-48-92 to-wit: ALL NO. NO. G-92-08-41 (AS AMENDED) (AS AMENDED)

GENERAL ORDINANCE NO. G-48-92

AN ORDINANCE of the Common Council of the City of Fort Wayne, Indiana amending Chapter 18 of the Municipal Code of the City of Fort Wayne by adding new Article III entitled Real Estate which is Used for the Illegal Use or Sale of Narcotics or Controlled Substances, Gambling or Prostitution.

WHEREAS, the Common Council of the City of Fort Wayne, and the Mayor of the City of Fort Wayne have determined this amendment to Chapter 18 of the Municipal Code of the City of Fort Wayne, adding a new Article III "Real Estate which is Used for the Illegal Use or Sale of Narcotics or Controlled Substances, Gambling or Prostitution" is necessary in order to give the Police Department and other departments and agencies of the City of Fort Wayne additional means to utilize in building a stronger and safer city; and

WHEREAS, the addition of this Article III to Chapter 18 of the Municipal Code of the City of Fort Wayne promotes the public safety and welfare of the citizens of the City of Fort Wayne, and will be in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

SECTION 1. Chapter 18 of the Municipal Code of the City of Fort Wayne, Indiana is hereby amended by adding thereto a new Article III "Real Estate which is Used for the Illegal Use or Sale of Narcotics or Controlled Substances, Gambling or Prostitution" which shall read as follows:

c. 18-53. PURPOSE. The Common Council of the City of Fort Wayne finds it to be in the best interests of the residents of the City of Fort Wayne and the general public to provide for the regulation of conduct it deems to be offensive, to prevent vice, disorder and immorality, and to promote public peace, health and safety, and to this end, the Common Council enacts this section.

c. 18-54 PERMITTING THE USE OF REAL ESTATE FOR ILLEGAL DRUG ACTIVITY, GAMBLING OR PROSTITUTION. No owner of real estate located in the City of Fort Wayne shall knowingly allow that real estate to be used as a site for any use or sale of illicit narcotics or controlled dangerous substances, gambling or prostitution after having received written notice pursuant to I.C. 36-7-9-25, from the Police Department of the City of Fort Wayne, that a present occupant or tenant of that property has been using selling illicit narcotics or controlled dangerous substances, or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or has been engaging in or allowing gambling or prostitution, or has otherwise been engaging or allowed activity constituting a nuisance pursuant to I.C. 34-1-52-1. A legal or equitable owner of real estate is deemed to have knowledge of such activity upon receipt of notice set forth herein. For the purposes of this Article, an owner of real estate is defined as any person who, alone, or jointly or severally with others shall have legal or equitable title in any dwelling or dwelling unit.

c. 18-55. Notice is deemed to be given to the owner, upon receipt of Notice as indicated above, by the owner of record pursuant to the records and files the Office of the Allen County Assessor's Office.

c. 18-56. DISCRIMINATION FORBIDDEN. Nothing in this section shall be construed to encourage or authorize the discrimination by lessors against any person(s) based upon race, creed, religion, sex, age, or national origin. Rather, it is the intent of this article to hold persons accountable for acquiescing or participating in the continued use of his/her property as the location of illegal drug activity, after having received notice as set forth in Section 18-55 above.

c. 18-57. REPORTS, INVESTIGATIONS AND NOTICES BY THE POLICE DEPARTMENT.

A complaint or report of suspected illegal activity constituting the use or sale of narcotics or controlled substances, or gambling, prostitution, or con-

34-1-52-1, by tenants, occupants and/or their visitors, guests or invites as observed by the lessor, third persons such as other tenants of the property, or persons residing or working in the vicinity of the property, or city officials, and/or representatives of agencies and/or departments of the City of Fort Wayne shall be submitted to the office of Narcotics and Vice Division of the Police Department of the City of Fort Wayne and each such report or complaint shall be individually logged in that office.

(b) Upon receipt of any report or complaint of suspected illegal activities on real estate premises, a determination shall be made by the Fort Wayne Police Department as to the need and nature of any further investigation including, but not limited to, the necessity for surveillance by the Police Department of such real estate premises.

(c) Upon completion of investigation by the Fort Wayne Police Department revealing that such suspected illegal activity is taking place at a particular premises, a warning letter shall be sent by the Fort Wayne Police Department to the owner of the real estate and a copy to the tenant/occupant whose premise is the subject of the investigation, by certified mail, return receipt requested, informing the owner of the investigation revealed the suspected illegal activity and the fact that there is an on-going investigation. The warning letter shall inform the owner of his/her choice to take action to abate such suspected illegal activity and of the intent of the Fort Wayne Police Department. If its on-going investigation indicates such suspected illegal activity has not ceased, to take further legal action.

(d) Once a search warrant has been obtained to search the real estate premises for narcotics or controlled substances, or for any other evidence related to such suspected illegal activity, a second letter which shall be sent to the owner of the real estate, by certified mail, return receipt requested, shall inform the owner that such warrant was served, that the investigation at the premises is continuing, and that legal proceedings may be commenced pursuant to this Article. Such letter shall inform the owner of his/her choice to take some form of remedial action. A copy of the letter shall be sent to the Chief of Police, the City Attorney's Office and to the tenant/occupant of the premises for which a search warrant is obtained.

(e) Upon receipt of a copy of the second letter issued under Section 18-57 (d) of this Article, the City Attorney's office may proceed under I.C. 34-1-52-2 (b) to abate or enjoin any suspected illegal activity as defined herein constituting a nuisance as defined in I.C. 34-1-52-1, and/or to advise the Police Department of the City of Fort Wayne to issue a notice pursuant to Section 18-54 and 18-55 of this Article. The notice shall advise that legal proceedings may be instituted against the owner of real estate pursuant to this Article and shall also inform the owner of his/her choice to commence eviction proceedings pursuant to Section 18-59 of this Article.

Sec. 18-58. CRITERIA FOR ESTABLISHING A VIOLATION. Conviction for a violation of this Article will be determined by the appropriate judicial authority based upon the totality of the circumstances present, including, but not limited to that the owner has received notices of suspected illegal activity pursuant to Secs. 18-54, 18-55 and 18-57 of this Article.

Sec. 18-59. EVICTION PROCEEDINGS AS A DEFENSE. No person shall be charged with the violation of this article if such person:

a) Has instituted eviction proceedings within thirty (30) days of receipt of notice of criminal activities in accordance with Section 18-54 above, against the tenant whose suspected criminal activities would otherwise give rise to potential liability under this article; and,

b) Has completed the eviction proceedings within thirty (30) days of commencement of the proceedings.

c) If any eviction proceedings are not completed within thirty (30) days by reason of court ordered delays in such proceedings, the person charged with a violation of this Article must, nonetheless, move forward expeditiously with any such eviction proceeding.

Sec. 18-60. MULTIPLE UNIT DWELLINGS. In the case of a multiple unit dwelling, the only person(s) necessary to name in an eviction proceeding is the tenant/occupant occupying the actual unit involved with the suspected illegal activity described herein.

Sec. 18-61. FILING OF CRIMINAL CHARGES.

this Article shall be an adjunct to, and not substitution for, any criminal charges filed as a result of investigation by the Police Department against occupants or tenants of that owner's real estate premises for use or sale of illicit drugs or controlled dangerous substances, gambling, prostitution or conduct constituting a nuisance pursuant to I.C. 34-1-52-1, or Section 18-35 of the Municipal Code of the City of Fort Wayne.

Sec. 18-62. ASSISTANCE BY CHIEF OF POLICE. The Chief of Police shall use reasonable efforts to train, educate and assist owners of real estate in avoiding placing tenants or occupants in their real estate who are known violators of illegal activities enumerated herein.

Sec. 18-63. LIMITED INDEMNIFICATION OF OWNERS OF REAL ESTATE. The City of Fort Wayne shall provide a limited indemnification to an owner of real estate located in the City of Fort Wayne, subject to the following conditions:

1. That the owner of real estate shall have received the written notice required by Section 18-54 of this Article from the Police Department of the City of Fort Wayne advising that a present occupant or tenant of the property of that owner of real estate has been using or selling illicit narcotics or controlled dangerous substances or allowing the using or selling of illicit narcotics or controlled dangerous substances at that property, or who has been engaging in or allowing gambling or prostitution or as otherwise been engaging in or allowing activity constituting a nuisance pursuant to I.C. 34-1-52-1.

2. That the owner of real estate has instituted eviction proceedings within thirty (30) days of receipt of notice of suspected illegal activities in accordance with Section 18-54 of this article against a tenant whose suspected criminal activities would otherwise give rise to potential liability under this article.

3. That the owner of real estate shall give no less than thirty (30) days notice to the City Attorney, by certified mail, return-receipt requested, of the trial date for any eviction proceedings and a list containing the names and addresses of all witnesses the owner of real estate intends to call at the hearing.

4. That the City Attorney, upon receipt of the notice and list of witnesses shall have the right to provide the owner of real estate with the names and addresses of additional other witnesses including but not limited to witnesses from the Fort Wayne Police Department whose presence shall be required at the hearing on the eviction proceedings.

5. All witnesses listed by either the owner of real estate and/or the City Attorney's office shall be subpoenaed by the owner of real estate in proper and legal fashion, and be allowed to testify.

6. The tenant involved as a defendant in the eviction proceedings shall prevail on the merits, not by reason of procedural irregularities but by sole reason that a court finds after trial that the illegal activity alleged in the notice the owner of real estate had received pursuant to Section 18-54 of this article, did not, in fact, take place.

7. The tenant institutes legal proceedings against the owner of real estate in the form of a counter claim or separate action and obtains a judgment for damages against the owner of real estate by reason of the tenant having prevailed on the merits in accordance with paragraph 6 above.

8. The owner of real estate completes whatever steps he/she chooses to undertake to seek review of the judgment by Motion to Correct Errors and/or appeal.

9. The limited indemnification by the City of Fort Wayne shall be restricted solely to those damages assessed by judgment against the owner of real estate as set out aforesaid but shall not, in any event, include any attorney's fees incurred by the owner of real estate in connection with the enforcement of any of the terms of this article; but will include either the reasonable attorney's fees incurred in the defense of legal proceedings brought by a tenant pursuant to paragraph 7 above regardless of the outcome of the proceedings, or the provision of the legal services by the City of Fort Wayne, at the City's option.

Sec. 18-64. LIST TO BE KEPT BY POLICE DEPARTMENT. The Police Department shall keep a list of the names and addresses of all tenants/occupants to whom copies of letters sent pursuant to Sec. 18-57 (d) of this article, and shall make the names available to members of the public requesting same in reference to potential renters of real estate in the

Sec. 18-65. PENALTY. Whoever violates any provision of this section shall, upon conviction thereof, be fined a sum up to Two Thousand Five Hundred (\$2,500.00) and costs of prosecution. Each violation of this article constitutes a criminal offense.

Sec. 2 This Ordinance shall be in full force and 60 days after its passage by the Common Council and approved by the Mayor of the City of Fort Wayne and proper legal publication, during the term owners of real estate in the City of Fort Wayne, Indiana shall have the opportunity to prepare lease documents for execution by their tenants which lease documents take into consideration the existence of this ordinance.

Donald J. Sc...  
COUNCILMEMBER

Read the third time in full and on motion by Sandra E. Kennedy, City Clerk, the same was adopted, placed on its passage. PAID BY THE FOLLOWING VOTE:

AYES: Nine  
Bradbury, Edmonds, GiaQuinta, Henry, Lunsey, Havine, Schmidt, Talarico  
NAYS: None  
ABSENT: None  
ABSTAINED: None  
DATED 11-10-92

Sandra E. Kennedy  
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-48-92 on the 10th day of November, 1992.

ATTEST:  
Sandra E. Kennedy, City Clerk  
Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of November, 1992, at the hour of 1:00 P.M., E.S.T.

Sandra E. Kennedy  
City Clerk

Approved and signed by me this 20th day of November 1992, at the hour of 11:00 o'clock A.M., E.S.T.

Paul H...

I, the Clerk of the City of Fort Wayne, Indiana hereby certify that the above and foregoing is a true and complete copy of General Ordinance G-48-92, passed by the Common Council on the 10th day of November, 1992, and that said Ordinance was duly signed and approved by the Mayor on the 20th day of November, 1992, and now remains in file and on record in my office.

WITNESS my hand, and the official seal of the City of Fort Wayne, Indiana, this 20th day of November, 1992.

SANDRA E. KENNEDY, CITY CLERK

11-27/12-4